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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-197982

DATE: February 26, 1981

MATTER OF: Colonel Edward P. Cutolo, USA

DIGEST: There is no statutory authority for payment of Army member's claim for housing expenses which exceeded his quarters and overseas housing allowances for a period prior to the date on which the Government leased the quarters directly. Also, the claim does not contain necessary elements of extraordinary nature and of unusual legal liability or equity so as to warrant its submission to Congress under the Meritorious Claims Act, 31 U.S.C. § 236 (1976).

This action is in response to a letter from Colonel Edward P. Cutolo, USA, appealing the October 18, 1979 settlement by our Claims Division which denied his claim for submission to the Congress under the Meritorious Claims Act for reimbursement of \$3,471.15 in housing costs.

Colonel Cutolo and his three dependents were transferred to Caracas, Venezuela, in January 1976, where he assumed the position of Chief, National Guard Section, United States Military Group, Venezuela. Several months after his arrival, Colonel Cutolo obtained a house to rent at a cost of \$1,121.50 per month which, along with utilities, repairs, and maintenance, Colonel Cutolo states exceeded his monthly quarters and overseas housing allowances by an average of \$433.89 per month. The record indicates that the high cost of housing in Venezuela was due to a spiraling inflationary trend which had accelerated to extreme proportions in the months prior to Colonel Cutolo's arrival. As his rental expenses exceeded the sum of his basic allowance for quarters and his overseas housing allowances, in February of 1976 Colonel Cutolo applied for a United States Government lease under which the Government would directly assume the rental and miscellaneous expenses associated with his residence. Upon review of his request by the Defense Security Assistance Agency (DSAA), of the Department of Defense, his quarters were authorized for direct Government lease in October of 1976, and the lease became effective November 1, 1976.

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On July 16, 1977, Colonel Cutolo filed a claim with the Claims Officer, United States Military Group, Venezuela, seeking reimbursement of \$3,471.15, this amount representing the sum of the rental and miscellaneous expenses incurred between March and October of 1976, inclusive, which exceeded his housing allowances. The basis of his claim is that these excess expenses would have been paid by the Government if the lease had been timely issued in February of 1976 when he initially rented his quarters.

In reviewing Colonel Cutolo's claim, the Department of the Army indicated that the 8-month delay in processing the application occurred under the following circumstances:

"Responsibility for administration of Government leased housing for USMILGPs passed from Department of the Army to Department of Defense (DSAA-TC) on 1 July 76. At that time, no Government leased houses were authorized in Venezuela since prior to that time, station housing allowances enabled assigned personnel to obtain adequate private leases without experiencing financial hardship. For this reason, apparently, DSAA was reluctant to approve such high priced Government leases. Likewise, they questioned whether real estate costs had actually skyrocketed as reported. Consequently, approval was delayed until 15 Oct 76 * * *."

By correspondence dated November 2, 1977, the Office of the Judge Advocate General, Army Claims Office, informed Colonel Cutolo that:

"Unfortunately, your claim is not cognizable or payable under any statute, regulation or appropriation available to this Service for the settlement of claims. As I informed you we have been informally advised by DA that neither program 10 funds or MAP funds are available for this type of expense.

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"Although your claim appears to be meritorious as a matter of equity, there is unfortunately, no legal basis for payment under Army claims regulations."

On January 18, 1978, Colonel Cutolo submitted a claim for reimbursement of the excess rental payments to the Army Finance and Accounting Center which referred the matter to our Claims Division for disposition. Our Claims Division considered the claim under the provisions of the Meritorious Claims Act, 31 U.S.C. § 236 (1976), and determined that the claim did not contain the necessary elements of legal liability or equity which would warrant reporting it to the Congress with a recommendation for payment, pursuant to that Act. Colonel Cutolo has requested reconsideration of the determination not to report his claim under the Meritorious Claims Act. For the reasons indicated below, we affirm the Claims Division's denial of the claim.

The Meritorious Claims Act of 1928, as codified in 31 U.S.C. § 236, provides that a claim filed in our Office which may not be lawfully adjusted by the use of an existing appropriation, but which in our judgment contains such elements of legal liability or equity as to be deserving of the consideration of Congress, shall be submitted to the Congress by special report with a recommendation for disposition thereof.

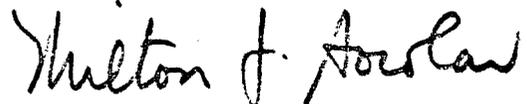
Upon a thorough review of the applicable statutes and regulations, we are unable to conclude that Colonel Cutolo's claim may be lawfully adjusted by the application of an existing appropriation, nor does it qualify for submission to Congress under the Meritorious Claims Act. Prior to issuance of the Government lease, the record indicates that Colonel Cutolo received his basic allowance for quarters pursuant to 37 U.S.C. § 403 (1976), and also the overseas station allowances authorized by 37 U.S.C. § 405 (1976). While the sum of these allowances was apparently insufficient to cover Colonel Cutolo's actual housing expenditures, there is no statutory authority of which we are aware under which we may authorize payment of his claim for additional expenses. Also, the fact alone that his expenses exceeded his allowances did not suffice to qualify him

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for receipt of Government leased housing, as the pertinent regulations contemplate administrative review of a member's housing situation prior to the issuance of a Government lease. Department of Defense (DOD) Directive No. 4165.45, Enclosure 5, Section I(B), January 19, 1972. While it is unfortunate that the administrative process in this matter spanned an 8-month period, this delay alone does not provide an adequate basis for a retroactive reimbursement of Colonel Cutolo's housing costs expended during this period in the absence of statutory authority for such reimbursement.

Turning to the applicability of the remedial provisions of the Meritorious Claims Act, we have consistently limited this procedure to extraordinary cases involving equitable circumstances of an unusual nature which are unlikely to constitute a recurring problem. As Colonel Cutolo has pointed out, other members now being assigned to Venezuela may be furnished Government leased housing so his problem is unlikely to recur there. However, we are aware of other cases in which available housing or per diem allowances have been insufficient to cover other members' or employees' housing expenses, and that situation is likely to occur in individual cases in the future. Thus, we must conclude that Colonel Cutolo's case is not so unique as to present the unusual elements of legal liability or equity which would justify reporting the claim to Congress for consideration under the Meritorious Claims Act.

Accordingly, the October 18, 1979 settlement by our Claims Division is sustained.



For the Comptroller General
of the United States